



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2012-0233]

Airport Improvement Program (AIP) Grant Assurances

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of modification of Airport Improvement Program grant assurances; opportunity to comment.

SUMMARY: On February 14, 2012, the FAA Modernization and Reform Act of 2012 was signed into law (P.L. 112-95). Provisions contained in this law necessitate modifications to five grant assurances.

DATES: The effective date the modifications to the grant assurances is [insert date of publication in the Federal Register]. The FAA will consider comments on the modifications to the grant assurances. If necessary, any appropriate revisions resulting from the comments received will be adopted as of the date of a subsequent publication in the Federal Register. Comments must be submitted on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may send comments [identified by Docket Number FAA-2012-0233]

using any of the following methods:

- Government-wide rulemaking web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Fax: 1-202-493-2251.
- Hand Delivery: To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank San Martin, Manager, Airports Financial Assistance, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267-3831; facsimile: (202) 267-5302.

Authority for Grant Assurance Modifications

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, Sections 47107 and 47122 of Title 49 United States Code.

SUPPLEMENTARY INFORMATION: A sponsor (applicant) seeking financial assistance for airport planning, airport development, noise compatibility planning or noise mitigation under 49 U.S.C., as amended must agree to comply with certain assurances. These assurances are submitted as part of a sponsor's application for federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified to reflect new federal requirements. Notice of such modifications is published in the Federal Register, and an opportunity for public comment is provided.

The assurances, prior to the FAA Modernization and Reform Act of 2012 (P.L. 112-95), were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361; on August 29, 1989, at 54 FR 35748; on June 10, 1994 at 59 FR 30076; on January 4, 1995, at 60 FR 521; on June 2, 1997, at 62 FR 29761; on August 18, 1999, at 64 FR 45008; on March 29, 2005 at 70 FR 15980; and on March 18, 2011, at 76 FR 15028.

A complete list of the current grant assurances can be viewed at:

[http://www.faa.gov/airports/aip/grant\\_assurances/](http://www.faa.gov/airports/aip/grant_assurances/)

Discussion of Grant Assurance Modifications

The FAA is modifying five grant assurances to conform with the FAA Modernization and Reform Act of 2012 (P.L. 112-95) (hereinafter “FMRA” or “the Act”). The FAA will implement these modified grant assurances upon publication of this notice to expedite processing fiscal year 2012 grants under the Airport Improvement Program. The FAA will accept public comments concerning these modified grant assurances for 30 days. If necessary, in response to comments received, the FAA will also adopt any appropriate revisions to these grant assurance modifications.

#### Through-the-Fence Arrangements

Section 136 of the FMRA amends the statutory conditions for project grant approval to permit sponsors of general aviation airports to enter into residential through-the-fence arrangements. The FAA is amending paragraph (g) of Sponsor Assurance 5, Preserving Rights and Powers, to conform to this change in the law. Additionally, the FAA is amending paragraph (a) of Sponsor Assurance 29, Airport Layout Plan, to require that all proposed and existing access points used to taxi aircraft across the airport property’s boundary be depicted on the airport layout plan (ALP). This includes all residential and commercial through-the-fence access points at both general aviation and commercial service airports. ALP depiction of existing access points can be made through pen-and-ink changes. ALP depiction of residential through-the-fence access points at general aviation airports will facilitate the FAA’s ability to enforce the requirements included in Section 136.

#### Use of Airport Revenues

Sections 149 and 813 of the Act modify the statutory grant assurances on use of airport revenue to add two new exceptions. The FAA is revising Sponsor Assurance 25 to incorporate these new statutory exceptions relating to use of proceeds from the sale of an airport and use of revenues derived or generated by mineral extraction. To make this assurance easier to understand, the FAA reorganized paragraph (a) of Sponsor Assurance 25 by taking the grandfathering exception set forth at the end of paragraph (a) and making it a new subparagraph (a)(1). The two new statutory exceptions are then stated verbatim as separate new subparagraphs (a)(2) and (3).

#### Veteran's Preference

Section 139 expands the statutory grant assurance regarding veteran's preference to include Persian Gulf veterans, Afghanistan-Iraq war veterans, and small business concerns owned and controlled by disabled veterans. FAA has revised Sponsor Assurance 15, Veteran's Preference, to include these changes verbatim.

#### Costs of Relocating or Replacing Sponsor-Owned Property

Sections 135(a) and 138(c) of the FMRA revise the statutory grant assurance relating to airport layout plans to provide that a sponsor does not have to bear all costs of relocating property or its replacement and of restoring the property or its replacement to the level that existed before the alteration was made in certain circumstances. The FAA has added this exception to paragraph (b) of Sponsor Assurance 29, Airport Layout Plan, to incorporate this statutory change.

### Disposal of Land

Section 135(b) of the Act makes several changes to the statutory assurances regarding disposal of land relating to noise buffers and leasing of land for noise compatibility purposes and preferences for reinvesting or transferring proceeds from disposal of land. These changes have been included in paragraphs (a) and (b) of Sponsor Assurance 31, Disposal of Land.

In consideration of the above, the FAA makes the following changes:

**C. Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

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#### **5. Preserving Rights and Powers.**

\* \* \* \* \*

- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on

airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

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- 15. Veteran's Preference.** It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

\* \* \* \* \*

- 25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

- 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to

the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

- 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

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## **29. Airport Layout Plan.**

- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as

runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and (4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site

acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

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### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of

title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the

following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

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Issued in Washington, DC on April 10, 2012.

Benito De Leon, Director  
Office of Airport Planning  
and Programming

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